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# LETTER DATED 9 FEBRUARY FROM THE PERMANENT REPRESENTATIVE OF BOSNIA AND HERZEGOVINA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

Please find enclosed a letter dated 9 February 2000 from Dr. Haris Silajdžić, Co-Chairman of the Council of Ministers of Bosnia and Herzegovina, addressed to you (see annex) regarding his proposal with respect to the Dayton/Paris Peace Accords, entitled "Memorandum on Change". This is not a proposal of the Government of Bosnia and Herzegovina. However, in view of Dr. Silajdžić's current official position and his role as one of the negotiators at Dayton, the proposal has significance and reflects the disappointment of some, or many, with the progress and development of the peace process.

May I ask for your kind assistance in circulating this letter and its annex as a document of the Security Council.

(Signed) Muhamed SACIRBEY
Ambassador
Permanent Representative

Annex

Letter dated 9 February 2000 from the Co-Chairman of the Council of Ministers of Bosnia and Herzegovina addressed to the Secretary-General

It is clear that there are positive results in the implementation of the Dayton Peace Accords, but this is no reason to close one's eyes to the reality of the current situation in Bosnia and Herzegovina. Some of the key aims of the Dayton Accords are still far from being attained. This is especially true of the return of refugees, of the reintegration of Bosnia and Herzegovina, of the establishment of an effective and democratic system of governance and of the economic revival of the country. In the majority of important spheres of life, the situation achieved by war, force and lawlessness is still maintained. The longer the status quo achieved by war is maintained, the more difficult it will be to achieve the anticipated positive changes and outcomes.

It has become obvious that the Dayton Accord itself includes certain structural errors, the consequence of the circumstances in which it arose. At the time the Dayton Accord was initiated, it was contestable, at least to the international players, whether Bosnia and Herzegovina had been the victim of aggression or whether it had undergone a purely civil war. There is now a relevant response to that question, since in many verdicts of the international war crimes Tribunal in the Hague it has been stated that this was an international conflict, which means that Bosnia and Herzegovina was subjected to aggression. The United Nations report on Srebrenica speaks for itself. At the time of signing of the Dayton Accord, the Belgrade regime and its leader were still considered as factors for peace. Today, after the events in Kosovo, after the North Atlantic Treaty Organization (NATO) intervention and the indictment of Milošević by the international war crimes Tribunal, this view appears absurd, and there is no further reason to retain the elements of his greater-state project that were built in to the Dayton Accord.

At the time of signing of the Dayton Accord, significant concessions were made at the insistence of the then Government of the Republic of Croatia and its leader. Recent changes in Croatia have shown that the citizens of Croatia themselves reject the policies of the previous Government both as to domestic and to foreign issues.

At the time the Dayton Accord was drawn up, the war in Bosnia and Herzegovina was considered to be a local conflict, so that peace plans were drawn up within that restricted framework. Four years later, it is understood that it was a regional crisis, and an appropriate framework has been created in the form of the Stability Pact for South-Eastern Europe.

The limited effects of the Dayton Accord and the many fundamental changes in circumstances since it was adopted point to the need to review the entire project, to remedy certain structural defects and to redefine the tactics for its implementation.

It is indispensable to ensure the mass, rapid and secure return of refugees, for which it is a prerequisite to define appropriate solutions and the commitment of all available resources to that end.

It is very important to overcome the extended constitutional crisis, which manifests itself in the blocking and ineffectual functioning of the institutions at all levels, from the municipalities through the entities to the State institutions of Bosnia and Herzegovina. It is unrealistic to expect that the situation can be changed merely by new elections. The Dayton Accord, and in particular its annex 4, sets out a system such that elections even actually perpetuate the balance of power achieved by the war. This has been shown in all the elections so far held, and without certain changes to the structure of the system itself, new elections will also produce similar results. A solution must be found, therefore, in the establishment of normal democratic institutions, in further decentralization on the model of cantonization of the country as a whole and in the establishment of the equal status of all constituent peoples throughout Bosnia and Herzegovina.

It is of vital importance to define a well-thought-out strategy for the economic development of Bosnia and Herzegovina. Because of inconsistencies in the implementation of the Dayton Accord, and because of its component flaws, Bosnia and Herzegovina is still economically unintegrated, which is one of the reasons for the failure to achieve the anticipated results in the sphere of the economy.

For the sake of further consolidating peace and stability, it is important to find appropriate solutions to the issue of the organization of the military, which must be reconstructed and adapted to the standards that are indispensable for integration into European defence systems.

All these results can be achieved in a relatively short period if the concept is reconciled with the changes that have come about and if the international community concentrates its efforts and makes use of the resources at its disposal.

Agreement on this can be reached within the framework of the countries signatory to the Dayton Accord, with appropriate commitment on the part of the Peace Implementation Council and a further expansion of the authority of the High Representative.

Such commitment can within a reasonably short period lead to very positive results, and in particular:

- Enabling Bosnia and Herzegovina to take responsibility for its own destiny, via its own institutions at all levels, and to further consolidate and develop a democratic system and democratic relations;

- Ensuring at least a basic level of protection of the human rights that were violated by war and genocide, the return of refugees and the preservation of the multi-ethnic character of Bosnia and Herzegovina;

- Contributing to the establishment of sustainable peace in the region, in which Bosnia and Herzegovina can become an important factor of reintegration, with the ultimate objective of the region's integration into Europe;

- Stimulating and accelerating positive changes in Serbia, since the present situation in Bosnia and Herzegovina is one of the components "feeding" and sustaining the regime in Belgrade;

- Finally, radical and rapid positive changes in Bosnia and Herzegovina will open the way to a successful conclusion to the mission of the international community within a specific term.

The reasons I have set out were the motivation for my launching the initiative formulated in the Memorandum on Change (see enclosure), for I believe that this is the way to achieve a lasting positive resolution of the crisis in Bosnia and Herzegovina.

Finally, I believe that to hold elections in these circumstances would be to commit yet another error. All indications are that elections will merely prolong the status quo and militate against efforts to bring about fundamental changes.

It is surely unacceptable for the international community to condemn the emergence of right-wing parties on the one hand, while on the other hand accepting, in Bosnia and Herzegovina, the results of genocide.

(Signed) Haris SILAIDŽIĆ

Enclosure

*DR. HARIS SILAJDŽIĆ*

**THE DAYTON PEACE ACCORD –
A TREATY THAT IS NOT BEING IMPLEMENTED**

# MEMORANDUM ON CHANGE

***Bosnia and Herzegovina as it is now is too strong to die,
but too weak to function as a self-supporting state***

Sarajevo, 25 January 2000

# THE CURRENT SITUATION

Four years after the signing of the General Framework Agreement for peace in Bosnia and Herzegovina, certain positive results can be seen, above all the fact that it ended the war, and in the stabilization of the peace, in the investment of significant funds dedicated to making good war damage, in freedom of movement and in the implementation of the annexes relating to military aspects.

Positive results have been achieved, primarily, through the active involvement and powerful presence of the international community in Bosnia and Herzegovina, especially of leading western countries and of the European Union.

Any objective assessment, however, must also acknowledge that many treaty obligations deriving quite specifically from the Dayton Accord have not been fulfilled. This is especially true of the unsatisfactory levels of return of refugees and displaced persons. It is clear that there is strong resistance to meeting the commitments relating to returns, the purpose of which is to maintain, contrary to the Dayton Accord, ethnically clean regions. Instead of return, one of the pillars of the Dayton Accord, depopulation is continuing, since more and more refugees are seeking and obtaining asylum and citizenship in European countries or permanently emigrating to overseas countries. Without far greater returns of those who were forced from their homes, the relevance and purpose of the Dayton project as a whole is called into question. Those who obstruct returns reckon that time is on their side, and that with the passage of time crimes will be forgotten and the situation brought about by force will be accepted as the reality.

Another commitment not being fulfilled is the undertaking to protect the human rights standards enshrined in international conventions. Contrary to the Dayton Accord, human rights are being violated throughout Bosnia and Herzegovina, most commonly in the form of discrimination on national, religious or political grounds. The aim of this policy is to confirm the thesis that a multi-ethnic Bosnia and Herzegovina is no longer possible.

The institutions of Bosnia and Herzegovina, established according to the provisions of the Dayton Accord, have been in practice, and continue to be, blocked. Tens of legislative projects, already prepared and urgently needed to normalize the situation and set in motion positive changes, have for some years been prevented from going through the parliamentary procedure, and when they come before the Presidency, the Council of Ministers or the Parliamentary Assembly, their adoption is blocked on the pretext of protecting vital national interests. In fact, the blocking of the institutions is in the interests of those political options that wish to prove that Bosnia and Herzegovina is an impossibility and that the only solution is partition and the absorption of territory into neighbouring states. For this reason the work of the state institutions of Bosnia and Herzegovina looks more like international conferences than the work of the organs of state.

Under pressure from the international community, the majority of political parties and leaders pay lip service to the Dayton Accord, but in practice are revising it, violating its provisions, and impeding its implementation.

The consequences of such conduct are also evident in the tendency to the further economic disintegration of Bosnia and Herzegovina. Privatization, as an essential prerequisite of economic revival, is in practice being effected almost solely on an ethnic basis, and represents yet another form of ethnic cleansing, in the field of ownership.

Disintegrative processes are also occurring in many other fields, and the ethnic concept of education threatens to perpetuate long-term national and religion hatreds in future generations.

The entire situation is also burdened by the fact that there are in effect three independent armies, existing for the sake of maintaining the internal equilibrium achieved by war, rather than for the defence of Bosnia and Herzegovina.

Important decisions of the Peace Implementation Council, particularly those from Sintra and Madrid, are being implemented exceedingly slowly or not at all, except to the extent that the High Representative implements them by imposition.

All this leads to the question: what is the Dayton Accord in international law, or in other words what is the place of international law in the Dayton Accord? Every treaty and constitution is subject to change, to amendment: history offers many examples from the Charter of the United Nations to the Constitution of the United States of America.

The chances of the survival of Bosnia and Herzegovina are constrained by its Dayton architecture: the disequilibrium between its integrity, from the perspective of international law, and its partition, from the perspective of internal law.

Bosnia and Herzegovina as it is now is too strong to die, but too weak to function as a self-supporting state.

# FACTS THAT CALL FOR A CHANGE TO THE DAYTON PEACE ACCORD

**1.** The primary objective of the Dayton Accord was to halt the hostilities in former Yugoslavia and in Bosnia and Herzegovina. Almost all other provisions of the Dayton Accord were subordinate to that aim. The Accord was drawn up and signed in an environment in which the greater-state politics of neighbouring states were still strongly present, and the key protagonists of those policies were signatories to the Accord. Because of compromises with the greater-state politics of neighbouring states, certain provisions that were incorporated into the Accord can now be seen to be so flawed as to call into question the entire project.

Four years after the signing of the Dayton Accord, the situation in the region has fundamentally altered. Greater-state politics in Croatia are discredited. The advocates of new political options in Croatia abjure such poli-

tics and stand for a fundamentally new attitude towards Bosnia and Herzegovina.

In Yugoslavia, or rather in Serbia, greater-state politics is in crisis. The concessions made to such politics in the Dayton Accord are seen to have been a mistake. The international community was finally compelled to repress by military means the destructive action of such politics, generating war crimes and genocide on a massive scale, and their chief protagonist has been accused of war crimes by the International Tribunal in The Hague.

It is an absurdity that elements of the greater-state projects of neighbouring states remain built in to the Dayton Accord, although those policies and their key actors have experienced their debacle and are effectively eliminated from the political stage.

It is illogical not to reconsider the special relations of Bosnia and Herzegovina with neighbouring states, when the majority of western countries, as a result of the imposition of sanctions, have suspended all relations with Yugoslavia and when the new government in Croatia has announced fundamental, positive changes in its policies towards Bosnia and Herzegovina. The Dayton framework even makes it possible, however, to establish special relations with internationally isolated neighbouring countries of Bosnia and Herzegovina.

The Stability Pact for South-Eastern Europe is another fundamentally new element. This is in large part the result, finally, of understanding that the causes of the war were not in Bosnia and Herzegovina itself, but in the greater-state projects of certain countries in the region, and that the only way to resolve the crisis is on a regional basis. That aspect was insufficiently present in Dayton.

The dynamic and quality of change in neighbouring countries, and in the region as a whole, logically point to the need for some reconstruction of the Dayton Accord, with the aim of preserving and strengthening all its relevant positive elements.

**2.** The Dayton Accord was created with the decisive participation of the international community, and in particular of leading western countries and of the European Union, and there is no doubt that they deserve credit for all the positive results of the Accord.

However, the passage of time has shown that there are also certain flaws in the structure of the Dayton project.

Although it is incontestable that the ruling political parties and their leaders in Bosnia and Herzegovina are responsible for many of the violations of the provisions of and obstruction to the implementation of the Peace Accord, it is for all that not appropriate to reduce the entire problem to the personal aspect. Elections have twice been held, and new people have been elected or appointed to many positions, but this has not essentially altered the balance achieved by war. It is thus worth stating that the constellation set in place by the Dayton Accord (in particular by Annex 4) is flawed and that this constellation will remain until certain individual provisions of the Accord are amended.

Stubbornly to insist on these provisions, as favoured by extreme nationalist political options, is to insist on pointless personal changes. Individual provisions of the Dayton Accord themselves reproduce the relations and the situation achieved by force prior to the Peace Accord, and restrict the possibilities of change.

This creates a vicious circle, since the entry of new political forces on the stage, that will lead to positive changes in these relations, is expected to happen through the electoral process, but the constitutional provisions in fact favour the long-term presence of those very political factors that wish to maintain the status quo and oppose positive change.

**3.** The return of refugees is the most important measure of implementation of the Dayton Accord and the most important criterion for evaluating the worth of the provisions contained in the Accord. The results of returns so far are not satisfactory. Returns are not taking place equitably, but – in part at least – only in one direction, and returns to the towns and cities are especially poor. The passage of time does not favour return. On the contrary, it discourages returnees, who find themselves obliged to make a life in new surroundings. For example, there are now some 100,000 refugees from Bosnia and Herzegovina seeking citizenship in Austria alone. At the same time, only forty-eight refugees or displaced persons have so far applied to participate in privatization in Republika Srpska. There are cynical attempts to represent the compulsion to make a life in new surroundings as a matter of freedom of choice. This is to draw a veil over the fact that these people were criminally forced to leave their homes and that they are prevented from returning.

If the return of refugees does not reach satisfactory levels, the crimes by which they were forced to leave will be rewarded by the perpetuation of ethnically clean regions, and the multi-ethnic concept of Bosnia and Herzegovina, reaffirmed by the Dayton Accord, will suffer defeat.

To enable refugees to return to their homes, to protect fundamental human rights, to ensure that crime is not rewarded and that the greater-state idea of neighbouring countries has no opportunity to rear its head again, it is essential urgently and radically to reconstruct those elements of the Dayton Accord that are seen to be non-integrative, ineffective, and even partly counter-productive to the return of refugees.

**4.** Individual provisions of the Dayton Constitution have been shown to be discriminatory and contrary to international standards of human rights and generally accepted democratic principles. These provisions restrict the process of democratization in Bosnia and Herzegovina, as is clearly evident in the draft Permanent Election Law. It is precisely these inadequate constitutional provisions that provide an excuse for the promoters of the Election Law, although the draft Law quite obviously includes provisions that lead to the further disintegration of Bosnia and Herzegovina and favour exclusive nationalist options.

It is very telling that the SDS – as the party that from the very start of the crisis in former Yugoslavia, through the

# THE DAYTON PEACE ACCORD – A TREATY THAT IS NOT BEING IMPLEMENTED

Dayton Accord, to the international intervention against Milo{evi}, has rejected all proposals of the international community – now almost unreservedly accepts the proposed Permanent Election Law. It is certain that the SDS has not changed its policies, but has in fact seen in the proposed Law the opportunity to revitalize its position and its policies.

The international community, and in particular the leading countries, as creators and guarantors of the Dayton Accord, must not provide an alibi and legitimacy to such processes. It is for this reason that it is essential to carry out certain corrections to the Dayton Accord, in particular to Annex 4.

Since we are in a situation where the international community must impose certain measures, then it is reasonable that what should be imposed is European standards, and not a retrograde concept. This would open up the possibility of a dynamic Europeanization of Bosnia and Herzegovina, which is the final positive objective. Such an approach would mean a paradigm shift in a positive direction, on the part of western leaders, towards Bosnia and Herzegovina.

**5.** Taking everything into consideration, the go-slow, step-by-step policy of implementation of the Dayton Accord has reached the end of its potential. If the Dayton project is not to be transformed into its own opposite, it is essential to speed up its implementation significantly, and by reconstructing individual elements to make it relevant in essence to the current situation.

This is the way to preserve the long-term values proclaimed by the Dayton Accord – building democratic institutions, establishing the rule of law, respecting human rights, the market economy, the multi-ethnic character of Bosnian-Herzegovinian society, the full protection of the national identity and equality of her peoples, the preservation of the territorial integrity, sovereignty, political independence, and international continuity of Bosnia and Herzegovina, as well as a high degree of internal decentralization.

These values and principles of the Dayton Accord should not be called into question, as they will be by the stubborn insistence on the unchangeability of specific inadequate and flawed provisions that are in fact contrary to the positive essence of the Dayton Accord.

## PROPOSALS

**I.** The General Framework Agreement for Peace in Bosnia and Herzegovina is a binding treaty, so that the question of its correction and reconstruction does not diminish the commitment to apply its provisions until changes have been effected in such a way as to give them their legal and political validity.

Merely initiating a process of critical review and of upgrading individual provisions is not contrary to any single provision of the Dayton Accord. It is without foundation, and illogical, to reject and to condemn transparent and principled initiatives for the review and reconstruction of the Dayton Accord, while at the same time tolerating those who verbally support but in practice violate and obstruct the Dayton Accord.

The proposal of the Peace Implementation Council and observer countries, guarantors of the Accord, critically to evaluate individual elements of the Accord that have been shown to be inadequate and to seek and propose better and more acceptable provisions that do not call into question the fundamental principles and positive values of the Dayton Accord, is legitimate and politically justified.

**II.** Efforts must be directed towards solutions that will correct, upgrade or amend individual provisions of Annexes 4 and 7 with the aim of:

- bringing about rapid, mass returns of refugees and displaced persons;
- building democratic institutions on the principle of establishing the rule of law and respecting human rights;
- achieving equal status and rights for all three constituent nations throughout Bosnia and Herzegovina;
- enabling the establishment and effective operation of all those institutions of Bosnia and Herzegovina that are essential for the protection of the integrity and sovereignty of the country and its regional and European integration;
- removing national discrimination from the electoral system and eliminating elements that favour extreme and nationally exclusivist political options;
- underpinning the economic reintegration of the country and establishing a single market in Bosnia and Herzegovina, and accelerating the privatization process without discrimination on national or any other grounds;
- initiating a process of further decentralization on the cantonal model throughout Bosnia and Herzegovina;
- finding a way to integrate all military units throughout Bosnia and Herzegovina;
- ensuring relations of equality with neighbouring countries, according to generally accepted principles of international law and in accordance with the new concept of regional stability.

**III.** The concept of reviewing and upgrading individual provisions must be directed towards establishing the conditions for effective moves that will rapidly produce positive results in the implementation of the Dayton Accord, creating a stable situation in Bosnia and Herzegovina and enabling the military mission of the international community in Bosnia and Herzegovina to end within a reasonably short period. At the same time, a dynamic must be defined that will lead to the successful conclusion of the commitments of the international community in regard to the civilian implementation of the Dayton Accord. The final outcome, then, must be the qualitative internal transformation of Bosnia and Herzegovina and her integration into Europe.